

D. Borne
12/17/04

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORPORATION, a
Washington corporation,

Plaintiff,

v.

ROGER HOEN, VERA ING, and MERRITT
LONG, in their official capacities as members
of the Washington State Liquor Control Board;

Defendants, and

WASHINGTON BEER AND WINE
WHOLESALE ASSOCIATION, a
Washington non-profit corporation,

Intervenor Defendant

NO. CV04-360P

ANSWERS AND OBJECTIONS OF
INTERVENOR-DEFENDANT
WASHINGTON BEER AND WINE
WHOLESALE ASSOCIATION TO
PLAINTIFF'S FIRST
INTERROGATORIES

Intervenor-Defendant Washington Beer and Wine Wholesalers Association
("WBWWA") responds to the First Interrogatories served on it by plaintiff Costco Wholesale
Corporation as follows:

DEF. WBWWA ANS. & OBJECTIONS - 1 of 23
(CV04-360P)
[1290749 v08.doc]

PLAINTIFF'S EXHIBIT	
CASE NO.	CV04-0360P
EXHIBIT NO.	227

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ORIGINAL

GENERAL OBJECTIONS

A. WBWWA objects to all of the First Interrogatories to the extent they purport to require answers pertaining to individual members of the Association rather than or in addition to answers pertaining to the Association itself. While the Association is a party to this litigation, the individual members are not.

B. WBWWA objects to all of the First Interrogatories to the extent they seek information about conduct in which the Association or its members may or may not have engaged, on the grounds that such information is neither relevant nor material to the validity of the statutes and regulations challenged by Costco, which is the sole issue involved in this litigation, and on the grounds that discovery of such information is not reasonably calculated to lead to the discovery of admissible information.

C. WBWWA objects to all of the First Interrogatories to the extent they purport to seek information about Association activities dating back to 1934, when WBWWA was founded, on the grounds that the failure to limit the temporal scope of those interrogatories with respect to Association activities makes them overly broad and unduly burdensome.

D. WBWWA objects to all of the First Interrogatories to the extent they purport to seek information protected from discovery by the attorney-client privilege, the attorney work product doctrine, or any other such privilege or doctrine.

E. WBWWA objects to all of the First Interrogatories to the extent they incorporate instructions and definitions that expressly or in effect purport to impose on WBWWA any obligations different from or greater than the obligations imposed on it by the Federal Rules of Civil Procedure. WBWWA will respond to the First Interrogatories in accordance with its understanding of its obligations under the Rules.

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INTERROGATORIES

INTERROGATORY NO. 1: Identify each action you or any of your members have taken to either reduce or increase the lawful consumption of wine or beer.

ANSWER:

See the General Objections, which are incorporated in this answer as though fully set forth. WBWWA further objects to this interrogatory on the grounds that it is vague and insufficiently designates the information sought. If this interrogatory is intended to elicit information about marketing and distribution activities of WBWWA members in the ordinary course of their respective businesses, WBWWA also objects to it on the grounds that it is overly broad and unreasonably burdensome, that information about normal marketing and distribution activities is neither relevant nor material to this case, and that discovery of such information is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and in accordance with such objections, and without waiving any of them, WBWWA answers as follows: So far as WBWWA is aware the Association has not taken any action to reduce or increase the lawful consumption of wine or beer. So far as WBWWA is aware none of its members has taken any action to reduce or increase the lawful consumption of wine or beer other than marketing and distribution done in compliance with the laws of the State of Washington.

INTERROGATORY NO. 2: Identify where, if at all, you or any of your members adopted a policy or plan to increase prices paid by retailers of wine or beer and identify each action you or any of your members have taken to increase prices paid by retailers of wine or beer.

1 **ANSWER:**

2 See the General Objections, which are incorporated in this answer as though fully set
3 forth. To the extent this interrogatory purports to call for information about individual pricing
4 decisions made by individual distributors, which decisions had the effect of increasing prices
5 paid by retailers to the individual distributors, WBWWA also objects to it on the grounds that
6 (a) it is overly broad and unreasonably burdensome, (b) information about individual pricing
7 decisions is neither relevant nor material to this case, (c) discovery of such information is not
8 reasonably calculated to lead to the discovery of admissible evidence, and (d) information
9 about past individual pricing decisions is available to Costco through the public records
10 maintained by the Washington State Liquor Control Board ("WSLCB") as easily as it is
11 available to WBWWA.
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14 Subject to and in accordance with such objections, and without waiving any of them,
15 WBWWA answers as follows: So far as WBWWA is aware the Association has not adopted
16 a policy or plan to increase prices paid by retailers of beer and wine. So far as WBWWA is
17 aware none of its members has adopted a policy or plan to increase prices paid by retailers of
18 beer and wine, except that whenever one of them makes a decision to change a price for a
19 particular product it affects what its retailer customers pay for that product. If this
20 interrogatory is intended to elicit information about actions other than individual pricing
21 decisions, so far as WBWWA is aware neither the Association nor any of its members have
22 taken any action to increase prices paid by such retailers
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1 **INTERROGATORY NO. 3:** Identify the “clearly articulated state policies” that you
2 contend in paragraph 28 of your Answer the State seeks to serve by each of the prohibitions
3 and requirements.

4 **ANSWER:**

5 The “clearly articulated state policies” to which WBWWA referred in its Answer are
6 set forth by the Washington legislature in the statutes themselves.
7

8 **INTERROGATORY NO. 4:** Identify how each state policy identified in response to
9 Interrogatory No. 3 is “actively supervised by the State” as you contend in paragraph 28 of
10 your Answer.

11 **ANSWER:**

12 WBWWA objects to this interrogatory to the extent it seeks information that can be
13 derived from public records that are as readily available to Costco as to the Association.
14 WBWWA further objects to this interrogatory to the extent it assumes that State action is
15 required to “supervise” all of the prohibitions and requirements about which Costco
16 complains. WBWWA maintains that the State exercises sufficient supervision over all
17 aspects of its regulatory policy to satisfy the *Parker v. Brown* doctrine, either through actions
18 of the legislature or the Liquor Control Board or, as is the case with the minimum markup
19 requirement, by direct operation of the statute itself. WBWWA further maintains that the
20 *Parker v. Brown* doctrine does not require any supervision of those aspects of the regulatory
21 system, such as the ban on volume discounts, which do not permit the exercise of any
22 discretion by suppliers or distributors and are thus self-executing.
23

24 Subject to and without waiving such objection, WBWWA answers as follows:
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1 WBWWA believes the State has engaged in extensive activities that constitute "active
2 supervision," including but not necessarily limited to the following: (a) the legislature
3 regularly reviews and, as deemed appropriate, modifies the statutory system regulating the
4 distribution and sale of beer and wine in the State; (b) the legislature exercises its authority to
5 review and, as deemed appropriate, require changes to WSLCB regulations; (c) WSLCB has
6 adopted comprehensive regulations governing the distribution and sale of beer and wine, with
7 all or substantially all of the provisions of those regulations adopted only after an opportunity
8 for comment is extended to the public; (d) WSLCB regularly reviews and, as deemed
9 appropriate, modifies the regulatory system governing the distribution and sale of wine in the
10 State; (e) WSLCB regularly reports to the Governor, the legislature and the public on its
11 activities; (f) WSLCB periodically recommends legislative changes that it deems appropriate;
12 (g) the legislature has created a self-executing mechanism for assuring the reasonableness of
13 prices by requiring a minimum markup of 10% over the cost of production or acquisition for
14 suppliers or distributors, whichever is applicable; (h) WSLCB has established a computerized
15 price posting system that automatically rejects any posting that fails to meet the 10%
16 minimum markup requirement; (i) WSLCB regularly audits distributors and retailers for
17 compliance with all laws; (j) WSLCB encourages suppliers, distributors, retailers, consumers
18 and others to report any activity that is believed or suspected to be in violation of any of the
19 laws or regulations governing the distribution and sale of beer and wine, and WSLCB
20 regularly receives such complaints; (k) WSLCB investigates credible complaints it receives,
21 including but not limited to complaints about improper sales, marketing, distribution, pricing
22 and other activities; and (l) WSLCB levies fines or other penalties against persons found to be
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1 in violation of the challenged laws if and to the extent it deems the violations warrant such
2 action.

3 WBWWA does not have exhaustive knowledge of all enforcement, review or other
4 activities of the State that might be included in "active supervision" of the challenged laws,
5 and additional documentary and other information about such activities may be developed in
6 discovery, particularly discovery directed to the WSLCB defendants.
7

8 **INTERROGATORY NO. 5:** Identify each specific state policy that you contend in
9 paragraphs 29 and 30 of your Answer the State serves in exercising its 21st Amendment
10 authority.

11 **ANSWER:**

12 WBWWA objects to this interrogatory on the grounds that it is vague and ambiguous,
13 because there is no reference to "state policy" in ¶¶ 29 and 30 of its Answer.

14 Subject to and in accordance with such objections, and without waiving them,
15 WBWWA answers as follows:

16 The 21st Amendment granted to all states the power to regulate the importation,
17 distribution and sale of alcohol within their respective borders, creating an exception to the
18 normal operation of the Commerce Clause. Washington has elected to exercise that power as
19 to beer and wine through an extensive regulatory system that includes but is not limited to the
20 prohibitions and requirements challenged by Costco. That system regulates the
21 "transportation or importation" of wine and beer "for delivery or use" within the State and is
22 therefore within the plain language of the 21st Amendment. To that end, the system adopted
23 by the legislature promotes: (a) rigorous control of the importation, distribution and marketing
24 of beer and wine; (b) prohibition of the purchase or consumption of beer or wine by minors;
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1 (c) discouraging irresponsible consumption of beer and wine; (d) discouraging pricing of beer
2 and wine at unreasonably low levels; (e) encouraging the continuation of a reasonable number
3 of retail outlets reasonably accessible to all citizens of the State; (f) discouraging illegal
4 marketing ("bootlegging") of beer and wine; (g) minimizing as much as reasonably
5 practicable the societal costs associated with the consumption of beer and wine; and
6 (h) assuring collection by the State of all taxes lawfully levied against beer and wine.
7

8 **INTERROGATORY NO. 6:** Identify how, and to what degree, each state policy
9 identified in response to Interrogatory No. 5 relates to the objectives of the 21st Amendment to
10 the United States Constitution.

11 **ANSWER:**

12 WBWWA objects to this interrogatory on the grounds that it is vague and
13 insufficiently designates the information sought, and on the grounds that Costco does not
14 define what it means by "the objectives of the 21st Amendment." WBWWA further objects to
15 this interrogatory to the extent it purports to seek information about the quantitative
16 relationship between "state policy" and "objectives of the 21st Amendment" on the grounds
17 that such information is neither relevant nor material to any of the issues in this litigation and
18 discovery of it is not reasonably calculated to lead to the discovery of admissible evidence.
19

20 Subject to and without waiving this objection, WBWWA answers as follows:

21 See the answer to Interrogatory No. 5, *supra*. WBWWA is not aware of any
22 information about quantitative relationships between specific prohibitions or requirements and
23 particular State policies or goals.
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1 **INTERROGATORY NO. 7:** Identify all regulatory efforts undertaken by the State
2 to supervise, control, or limit the impact on competition or consumers of any of the
3 prohibitions and requirements.

4 **ANSWER:**

5 WBWWA objects to this interrogatory on the grounds that it is vague and ambiguous,
6 in that it seems to assume the State has taken or should take action to control or limit the
7 intended effects of the statutes and regulations challenged by Costco.

8 Subject to and in accordance with the foregoing objections, and without waiving them,
9 WBWWA answers as follows:
10

11 The purpose and effect of the entire State system regulating the distribution and sale of
12 beer and wine, including but certainly not limited to the prohibitions and requirements, are to
13 replace unfettered competition with a system of regulated competition. However, the system
14 is also designed to permit competition to function within the regulatory system. In that sense
15 the regulatory system itself “controls” and “limits” the impact of the prohibitions and
16 requirements on competition and consumers. The legislature and WSLCB have, on numerous
17 occasions since 1934, reviewed the statutes and regulations and, when deemed appropriate,
18 changed them. Some or all of this activity could be construed as efforts by the State to
19 “control” the impact of the regulatory system on competition and consumers. With respect to
20 the subject of “supervision” see the answer to Interrogatory No. 4, *supra*. To the extent this
21 interrogatory is directed to some other aspect of the regulatory system or to activities of the
22 State outside the regulatory system, WBWWA objects to it on the grounds that it seeks
23 information that is neither relevant nor material to any issue in this case and discovery of
24 which is not reasonably calculated to lead to the discovery of admissible evidence.
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1 INTERROGATORY NO. 8: Identify as to each prohibition or requirement why you
2 contend it is necessary to the accomplishment of each state policy you contend justifies the
3 prohibition or requirement.
4

5 ANSWER:

6 WBWWA does not contend that any particular prohibition or requirement is
7 "necessary" to the furtherance or accomplishment of any particular State policy or goal.

8 Rather, WBWWA contends that each provision of the regulatory system adopted by the State
9 reflects a legislative decision as to how the State will exercise the powers reserved to it by the
10 21st Amendment.

11 INTERROGATORY NO. 9: Identify the roles played by you or any of your
12 members in the proposal, adoption, or retention of any of the prohibitions and requirements.

13 ANSWER:

14 See the General Objections, which are incorporated in this answer as though fully set
15 forth. WBWWA also objects to this interrogatory on the grounds that the information sought
16 is neither relevant nor material to this litigation and that discovery of the information sought is
17 not reasonably calculated to lead to the discovery of admissible evidence. WBWWA
18 contends (a) that information as to the legislative history of any particular statute or regulation
19 is irrelevant to Costco's allegations of facial defects in the challenged laws; (b) that, since
20 Costco has not alleged any unlawful conduct by WBWWA or any of its members (except to
21 the extent Costco maintains that mere compliance by individual licensees with the State's
22 regulatory system is unlawful), any role WBWWA or its members may have played in
23 connection with any particular statutory or regulatory provision of the regulatory system is
24 irrelevant; and (c) that communications with the legislature or with state agencies are
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1 constitutionally protected under the Noerr-Pennington doctrine, and thus irrelevant to
2 Costco's antitrust challenge to the regulations and prohibitions.

3 Subject to and in accordance with the foregoing objections, and without waiving them,
4 WBWWA answers as follows:
5

6 WBWWA has from time to time lobbied for or against the adoption of particular
7 statutes or regulations and for or against the adoption of particular amendments to statutes,
8 regulations or bills. WBWWA has from time to time commented on and provided
9 suggestions for drafts of proposed bills, statutes and regulations. WBWWA has from time to
10 time considered changes to the statutes and regulations proposed by individual members, by
11 WSLCB, and by others. To the extent these actions of WBWWA are reflected in documents
12 retained by the State, such documents are as readily available to Costco as to the Association.
13 To the extent these actions are reflected in minutes of WBWWA meetings or in other
14 documents maintained by the Association, such documents are among the materials to be
15 produced to Costco in response to its First Request for Production of Documents and the
16 information sought by this interrogatory can be derived from such documents by Costco as
17 easily as by WBWWA. Therefore, pursuant to Rule 33(d) and subject to exclusion of
18 particular materials on the grounds of the attorney-client privilege, the attorney work product
19 doctrine, or any other such privilege or doctrine, those records will be made available to
20 Costco for inspection and copying at a reasonably agreeable time.
21

22 **INTERROGATORY NO. 10:** Identify all communications you or any of your
23 members have had regarding the proposing, adoption, or retention of any of the prohibitions
24 and requirements.

25 **ANSWER:**
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1 See the General Objections, which are incorporated in this answer as though fully set
2 forth, and the objections to Interrogatory No. 9, above. WBWWA also objects to this
3 interrogatory on the grounds that it is overly broad and unduly burdensome.
4

5 Subject to and in accordance with the foregoing objections, and without waiving them,
6 WBWWA answers as follows:

7 The membership of WBWWA has on occasion discussed the pros and cons of
8 proposed legislation at membership meetings. Phil Wayt, Executive Director of WBWWA,
9 has testified before various committees of the legislature and before the WSLCB on numerous
10 occasions, and on some of those occasions one or more member of WBWWA also testified.
11 Records of such testimony are generally maintained by the legislature, and those records are
12 as readily available to Costco as to the Association. The Association may have some records
13 of communications with legislators and others pertaining to various pieces of legislation and
14 regulations adopted or considered by the legislature or by WSLCB at various times since
15 1934. To the extent WBWWA has records that would reflect or pertain to any of the above-
16 described testimony or communications, or has minutes memorializing any internal
17 discussions, those documents are included among the materials to be produced to Costco in
18 response to its First Request for Production of Documents. The information sought by this
19 interrogatory can be derived from those records by Costco as easily as by WBWWA.
20 Therefore, pursuant to Rule 33(d) and subject to exclusion of particular materials on the
21 grounds of the attorney-client privilege, the attorney work product doctrine, or any other such
22 privilege or doctrine, those records will be made available to Costco for inspection and
23 copying at a reasonably agreeable time. To the extent this Interrogatory seeks further
24 identification of testimony, or purports to require the Association to identify each time since
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1 1934 that one of its members or representatives had a discussion with other members of
2 WBWWA, with a member or employee of the legislature or with a representative or employee
3 of WSLCB, WBWWA objects to it on the grounds that it is overly broad and unreasonably
4 burdensome.

5
6 **INTERROGATORY NO. 11:** Identify each instance in which you or any of your
7 members provided or offered a sample or other item of value to any legislator, legislative
8 employee, WSLCB board member, or WSLCB employee.

9 **ANSWER:**

10 See the General Objections, which are incorporated in this answer as though fully set
11 forth. In addition, to the extent this interrogatory seeks information about items of nominal
12 value that could be given to and received by public officials without any statute, rule, code of
13 conduct or ethical proscription being violated WBWWA objects to the interrogatory on the
14 grounds (a) that it is unreasonably broad and unduly burdensome, (b) that the information it
15 seeks is neither relevant nor material to any issue in this case and discovery of such
16 information is not reasonably calculated to lead to the discovery of admissible evidence, and
17 (c) that the information sought, to the extent it is available, is memorialized in public
18 documents maintained by WSLCB, the Public Disclosure Commission or other state agencies
19 and such documents are as readily available to Costco as to the Association.

20
21 Subject to and in accordance with such objections, and without waiving them,
22 WBWWA answers as follows:

23 To the extent this interrogatory seeks information about items of value that could not
24 be provided without violating a statute, rule, code of conduct or ethical proscription,
25 WBWWA is not aware of any such instance. WBWWA may have some documents reflecting
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1 occasions on which it has, without violating any statute, rule, code of conduct or ethical
2 proscription, given items of nominal value to a legislator, a legislative employee, or a member
3 or employee of WSLCB. To the extent such documents exist they are among the materials to
4 be produced to Costco in response to its First Request for Production of Documents and the
5 information sought by this interrogatory can be derived from such documents by Costco as
6 easily as by WBWWA. Therefore, pursuant to Rule 33(d) and subject to exclusion of
7 particular materials on the grounds of the attorney-client privilege, the attorney work product
8 doctrine, or any other such privilege or doctrine, those records will be made available to
9 Costco for inspection and copying at a reasonably agreeable time.
10

11 **INTERROGATORY NO. 12:** Identify any instance in which you are aware that two
12 or more of your members discussed prices or other terms and conditions of sale to retailers.

13 **ANSWER:**

14 See the General Objections, which are incorporated in this answer as though fully set
15 forth. Subject to and in accordance with such objections, and without waiving them,
16 WBWWA answers as follows:

17 WBWWA is aware that a consent decree was entered in Superior Court in one or more
18 Washington counties in 1984, barring certain distributors from allocating territories,
19 allocating customers and fixing prices. WBWWA has no knowledge of the facts giving rise
20 to entry of the consent decree. The copy of the consent decree in the possession of WBWWA
21 and any other documents in its possession related to it are included among the documents to
22 be produced to Costco in response to its First Request for Production of Documents. The
23 Association is not aware of any instance where two or more members engaged in any
24 discussions about price or the terms or conditions of sale, except that at many WBWWA
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1 meetings there has been discussion about the impact actual or proposed statutes or
2 regulations, including but not limited to the prohibitions and requirements, have or could have
3 on the terms and conditions of sale. To the extent this interrogatory is intended to elicit
4 information about such discussions, WBWWA objects to it on the grounds that it is
5 unreasonably broad and unduly burdensome, and on the further grounds that such information
6 is neither relevant nor material to any of the issues in this case and discovery of it is not
7 reasonably calculated to lead to the discovery of admissible evidence. To the extent this
8 interrogatory is intended to elicit information about such discussions regarding potential
9 legislation or regulations, or potential amendments to legislation or regulations, WBWWA
10 objects to it on the grounds (a) that, since Costco has not alleged any unlawful conduct by
11 WBWWA or any of its members (except to the extent Costco maintains that mere compliance
12 by individual licensees with the State's regulatory system is unlawful), any role WBWWA or
13 its members may have played or considered playing in connection with any particular
14 statutory or regulatory provision of the regulatory system is irrelevant; and (b) that
15 communications with the legislature or with state agencies are constitutionally protected
16 under the Noerr-Pennington doctrine, and thus discussions among WBWWA members
17 regarding any such actual or potential communications, if any occurred, would be irrelevant to
18 Costco's challenges to the regulations and prohibitions. To the extent this interrogatory is
19 intended to elicit information about discussions regarding terms and conditions of sale other
20 than those referred to above, WBWWA is not aware of any such discussions.

23 **INTERROGATORY NO. 13:** Identify each entity or person other than you or your
24 members that you have information is providing any financial or other assistance to you, other
25 defendants, or the State in the defense of this litigation.
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1 **ANSWER:**

2 WBWWA objects to this interrogatory on the grounds that the information sought is
3 neither relevant nor material to this litigation and discovery of the information is not
4 reasonably calculated to lead to the discovery of admissible evidence. The identity of specific
5 persons who may have an interest in the outcome of this litigation sufficient to impel them to
6 support WBWWA, assuming such persons exist, has no bearing on the validity or invalidity
7 of the prohibitions and requirements challenged by Costco.
8

9 **INTERROGATORY NO. 14:** Identify each instance in which you or any of your
10 members suggested to an in-state supplier that it would be unwise or in any way
11 disadvantageous for the supplier to sell directly to a retailer.

12 **ANSWER:**

13 See the General Objections, which are incorporated in this answer as though fully set
14 forth. WBWWA further objects to this interrogatory on the grounds that the information it
15 seeks is neither relevant nor material to any issues in this case and discovery of such
16 information is not reasonably calculated to lead to the discovery of admissible evidence. Such
17 "suggestions," if any occurred, have no bearing on the validity or invalidity of the
18 prohibitions and requirements.
19

20 Subject to and in accordance with such objections, and without waiving them,
21 WBWWA answers that it has not made any such suggestion and is not aware of any instance
22 where any of its members made any such suggestion.

23 **INTERROGATORY NO. 15:** Identify the exact manner in which a "market impact"
24 would be inflicted on your members and their "survival" threatened if the prohibitions and
25 requirements were removed.
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1 **ANSWER:**

2 See the General Objections, which are incorporated in this answer as though fully set
3 forth. WBWWA further objects to this interrogatory on the grounds that the information
4 sought is neither relevant nor material to this litigation and discovery of the information is not
5 reasonably calculated to lead to the discovery of admissible evidence. The quoted statement
6 appears to have been taken from the Association's motion for leave to intervene, and the
7 interrogatory appears to elicit information that is germane solely to intervention.
8

9 Subject to and without waiving such objection, WBWWA answers as follows:

10 If Costco succeeds in its effort to dismantle the State's three-tier regulatory system,
11 larger retailers such as Costco will circumvent distributors to buy beer and wine directly from
12 suppliers in many if not all circumstances. To the extent distributors are used, if at all,
13 demands by larger suppliers and larger retailers for lower prices, expanded service, volume
14 discounts and other concessions will have a severe economic impact that could make survival
15 of distributors difficult if not impossible.
16

17 **INTERROGATORY NO. 16:** Identify how removal of the prohibitions and
18 requirements would be a "profound loss for the citizens of the State."

19 **ANSWER:**

20 See the General Objections, which are incorporated in this answer as though fully set
21 forth.

22 Subject to and without waiving such objections, WBWWA answers as follows:

23 If the Court were to invalidate the prohibitions and requirements Costco has
24 challenged the State would lose much of its ability to regulate the distribution and sale of beer
25 and wine in the manner it has deemed appropriate. WBWWA believes the consequences of
26

1 such losses would probably include, and might not be limited to, an increase in promotion, an
2 increase in irresponsible consumption with all the attendant societal costs that would bring, an
3 increase in minors obtaining access to beer and wine, a decrease in the selection of beer and
4 wine available to any but the most affluent consumers, a decrease in the number of outlets
5 where beer and wine could be legally purchased at a reasonable price, a decrease in the
6 amount of tax revenue collected by the State, and an increase in "bootlegging" or other illegal
7 marketing.
8

9 **INTERROGATORY NO. 17:** Identify how removal of the prohibitions and
10 requirements would "eviscerate" the State's three-tier regulatory system.

11 **ANSWER:**

12 See the General Objections, which are incorporated in this answer as though fully set
13 forth. Subject to and without waiving such objections, WBWWA answers as follows:

14 See the answer to Interrogatories Nos. 15 and 16, *supra*.

15 **INTERROGATORY NO. 18:** Identify how removal of the prohibitions and
16 requirements would result in the loss of your or your members' contract rights.

17 **ANSWER:**

18 See the General Objections, which are incorporated in this answer as though fully set
19 forth. WBWWA further objects to this interrogatory on the grounds that the information
20 sought is neither relevant nor material to this litigation and discovery of the information is not
21 reasonably calculated to lead to the discovery of admissible evidence. The quoted statement
22 appears to have been taken from the Association's motion for leave to intervene, and the
23 interrogatory appears to elicit information that is germane solely to intervention.
24

25 Subject to and without waiving such objection, WBWWA answers as follows:
26

DEF. WBWWA ANS. & OBJECTIONS - 18 of 22
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1 See the answer to Interrogatories Nos. 15 and 16, *supra*.

2 **INTERROGATORY NO. 19:** Identify all information available to you as to the
3 territories and brands or suppliers served by each of your members.
4

5 **ANSWER:**

6 See the General Objections, which are incorporated in this answer as though fully set
7 forth. WBWWA further objects to this interrogatory on the grounds that the information
8 sought is neither relevant nor material to this litigation and discovery of the information is not
9 reasonably calculated to lead to the discovery of admissible evidence. The specific territories
10 served by particular distributors, and the specific brands those distributors sell, has no bearing
11 on the validity or invalidity of the prohibitions and requirements.
12

13 Subject to and in accordance with such objections, and without waiving them,
14 WBWWA answers as follows:

15 To the extent the information sought by this interrogatory is known to the Association
16 it is reflected in its current member directory. The specific information requested can be
17 derived from that directory by Costco as readily as by WBWWA. Therefore, in accordance
18 with Rule 33(d), the Association will make those directories available to Costco for inspection
19 and copying at a mutually convenient time in lieu of further answer.
20

21 **INTERROGATORY NO. 20:** Identify each potential new or amended statute or
22 regulation that you or any of your members have formally or informally proposed or are
23 presently considering proposing.
24
25
26

1 **ANSWER:**

2 See the General Objections, which are incorporated in this answer as though fully set
3 forth. To the extent this interrogatory seeks information regarding statutes or regulations
4 other than those governing the distribution and sale of beer and wine, WBWWA objects to it
5 on the grounds (a) that it is overly broad and unreasonably burdensome, and (b) the
6 information it seeks is neither relevant nor material to any of the issues in this litigation, and
7 discovery of such information is not reasonably calculated to lead to the discovery of
8 admissible evidence. To the extent this interrogatory seeks information regarding statutes or
9 regulations that do directly pertain to the distribution and sale of beer and wine, WBWWA
10 objects to it on the grounds that the information sought is neither relevant nor material to this
11 litigation and that discovery of the information sought is not reasonably calculated to lead to
12 the discovery of admissible evidence. WBWWA contends that information as to legislation
13 the Association or one of its members may be considering, assuming that any such legislation
14 exists, is irrelevant to the validity or invalidity of the prohibitions and requirements. See also
15 the objections to Interrogatories Nos. 9 and 10, *supra*.
16

17 Subject to and in accordance with the foregoing objections, and without waiving them,
18 WBWWA answers as follows:
19

20 See the Answer to Interrogatories Nos. 9 and 10, *supra*.

21 **INTERROGATORY NO. 21:** Identify all communications between you or any of
22 your members and any WSLCB representative or any other third party relating to Costco's
23 letter to the Attorney General's Office dated August 29, 2003, this litigation, Costco's
24 concerns as reflected in that letter or this litigation, or the proposal that became SB 6737 in
25 the last legislative session.
26

DEF. WBWWA ANS. & OBJECTIONS - 20 of 22
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1 **ANSWER:**

2 See the General Objections, which are incorporated in this answer as though fully set
3 forth. See also the objections to Interrogatories Nos. 9 and 10, *supra*.

4 **INTERROGATORY NO. 22:** Identify each person not acting as your counsel who
5 answered, supplied information for answers, or otherwise assisted in preparing answers to
6 these interrogatories.
7

8 **ANSWER:**

9 Phil Wayt.

10 **RULE 26(g) CERTIFICATION**

11 I have read the foregoing answers and objections to these interrogatories and certify
12 that, to the best of my knowledge, information and belief, formed after a reasonable inquiry,
13 they comply with the requirements of Federal Rule of Civil Procedure 26(g),

14 Dated this 17th day of December, 2004.

15 GORDON, THOMAS, HONEYWELL, MALANCA,
16 PETERSON & DAHEIM LLP

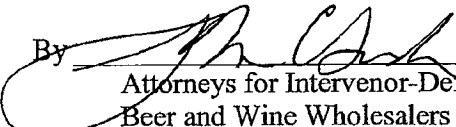
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21 and


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23 Robert A. Baronsky, WSBA No. 482
24 rbaronsky@eisenhowerlaw.com


25 By  _____
26 Attorneys for Intervenor-Defendant Washington
 Beer and Wine Wholesalers Association

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I certify on behalf of Intervenor-Defendant Washington Beer and Wine Wholesalers Association that I have read the foregoing answers to these interrogatories and believe them to be true and correct.


Phillip H. Wayt
Executive Director

SUBSCRIBED AND SWORN to before me this 20th date of December, 2004.


Print of Type Name: John C. Guedenle
NOTARY PUBLIC in and for the State of
Washington, residing at Tacoma
My Commission expires: 7/3/06